

their official duties. Decisions must not be arbitrary, capricious or biased. Individuals must be treated equally and with tolerance.

(6) *Caring.* Compassion is an essential element of good government. Courtesy and kindness, both to those we serve and to those we work with, help to ensure that individuals are not treated solely as a means to an end. Caring for others is the counterbalance against the temptation to pursue the mission at any cost.

(7) *Respect.* To treat people with dignity, to honor privacy and to allow self-determination are critical in a government of diverse people. Lack of respect leads to a breakdown of loyalty and honesty within a government and brings chaos to the international community.

(8) *Promise keeping.* No government can function for long if its commitments are not kept. DoD employees are obligated to keep their promises in order to promote trust and cooperation. Because of the importance of promise keeping, it is critical that DoD employees only make commitments that are within their authority.

(9) *Responsible citizenship.* It is the civil duty of every citizen, and especially DoD employees, to exercise discretion. Public servants are expected to engage personal judgment in the performance of official duties within the limits of their authority so that the will of the people is respected in accordance with democratic principals. Just must be pursued and injustice must be challenged through accepted means.

(10) *Pursuit of excellence.* In public service, competence is only the starting point. DoD employees are expected to set an example of superior diligence and commitment. They are expected to be all they can be and to strive beyond mediocrity.

#### **§ 84.48 Ethical decisionmaking.**

(a) *General.* Virtually every one in Federal Government service makes job-related decisions. Some of these decisions may seem more important than others, but all should be preceded by a consideration of ethical ramifications. In some cases, the ethical element of

decision-making will go no further than to consciously acknowledge that there are no significant ethical ramifications to consider. In other cases, in-depth ethical analysis is called for in addition to application of ethics rules. The following plan for decision-making ensures careful review of ethical consequences when there are alternative solutions that seem proper under existing laws and regulations. DoD employees should consider incorporating the following plan in official decision-making.

(b) *Ethical decisionmaking plan.*

(1) *Define the problem.* Proceed from a general statement of the problem to specific statements of the decisions to be made. As you take the following steps, such as identifying goals and naming stakeholders new problems or needed decisions may become apparent. Be willing to add these to your problem list as you go.

(2) *Identify the goal(s).* Proceed from a general statement of an end result both long term and short term. Be prepared to add to this list as you take the following steps. Goals are something to strive toward. They are statements of the best possible results. The very best is not always achieved for everyone. Many problems do not allow for "win/win" outcomes. Be prepared to fall somewhat short of some goals for the sake of ethics and other considerations.

(3) *List applicable law or regulations.* Laws and regulations are basic constraints within which official decisions are made. Until all relevant laws and regulations are considered, ethical decision-making is impossible. Although it is conceivable that an ethical decision could violate a law or regulation, such circumstances are rare.

(4) *List the ethical values at stake.* Listing the ethical values at stake can awaken you to problems and goals that you may not have otherwise considered. It may alert you to stakeholders you may not have recognized. Listing the values reminds you of your commitment to them at a time when stress of the problem may cause you to forget.

(5) *Name all the stakeholders:* A stakeholder is anyone who is likely to be affected by a decision. Many stakeholders will be apparent because of the previous steps you already followed. More will occur to you as you give the matter a few minutes of thought. Do not forget to include yourself and the people who may depend on you for support, both at work and at home. As you list the stakeholders, try to note the way your decision could affect them. In other words, name what is at stake for the stakeholder.

(6) *Gather additional information.* This step is frequently overlooked. The stress from the problem urges speedy solutions. However, hasty decisions usually create problems of their own. Take the time to gather all necessary information. Ask questions, demand proof when appropriate, check your assumptions.

(7) *State all feasible solutions.* By this time, some feasible solutions will have presented themselves. Others may be found by sharing the lists and information you have pulled together and "brain storming." As you state the feasible solutions, note which stakeholders could be affected and what might be gained or lost.

(8) *Eliminate unethical options.* There may be solutions that seem to resolve the problem and reach the goal but which are clearly unethical. Remember that short term solutions are not worth sacrificing our commitment to ethics. The long term problems of unethical solutions will not be worth the short term advantages. Eliminate the unethical solutions.

(9) *Rank remaining solutions.* Other solutions may not be clearly unethical but may be questionable. You may have to rely on intuition or "gut feelings" to weed out these solutions. Put these possible solutions at the bottom of your list. Rank the remaining solutions, which are all ethical ones, in order of how close they bring you to your goal and solve the problem.

(10) *Commit to and implement the best ethical solution.* Commitment and implementation are vital to the ethical decision-making process. Determining which solution is the best ethical one is a meaningless exercise unless implementation of the ethical solution fol-

lows. If the right decision is not implemented, the door is left wide open for others to implement unethical solutions.

#### APPENDIX A TO PART 84—DIGEST OF LAWS

##### Section 1. DoD-specific Statutes

(a) *Synopsis of laws.* DoD employees and former DoD employees are cautioned that the descriptions of the laws and regulations in this part should not be the only source relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, the descriptions are not exhaustive and restrictions are dependent on the specific facts in a particular case. Accordingly, DoD employees and former DoD employees are encouraged to discuss specific cases with a DoD component Ethics Counselor (no attorney-client privilege) or with private counsel.

(b) *10 U.S.C. 2397a, "Requirements Relating to Private Employment Contacts Between Certain DoD Procurement Officials and Defense Contractors."*

(1) This statute applies to civilian DoD employees at pay rates of GS/GM-11 or above and to military officers in grades 0-4 or above. If such an individual has participated in the performance of a procurement function in connection with a DoD awarded defense contract and is contacted by the defense contractor to whom the defense contract was awarded regarding future employment opportunities with the defense contractor, the individual must:

(i) Promptly report the contact to his supervisor and to the DoD component DAEO; and

(ii) Disqualify himself from all participation in the performance of procurement functions relating to contracts of the defense contractor.

(2) A DoD employee is not required to report an initial contact with a defense contractor or disqualify himself if he terminates the contact immediately and rejects any offer of employment. The individual must make a report and disqualify himself, however, if subsequent contacts are made.

(c) *10 U.S.C. 2397, "Employees or Former Employees of Defense Contractors: Reports."* This statute requires all former civilian DoD employees GS/GM-13 or above, or military officers 0-4 or above, to file DD Form 1787<sup>1</sup> for a period of two-years after leaving Federal Government service, if the former DoD employee is employed with a defense contractor who had been awarded \$10 million in defense

<sup>1</sup>Copies are available from DoD Standards of Conduct Office, Office of General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600.

contracts during the year preceding employment of the former DoD employee, and the former DoD employee receives at least \$25,000 a year (\$12 per hour) from the defense contractor.

(d) *10 U.S.C. 2397b, "Certain Former DoD Procurement Officials: Limitations on Employment by Contractors"*. This statute imposes a two year prohibition on former civilian DoD employees GS/GM-13 and above, and former military officers 0-4 and above, from accepting more than \$250 in payment, gift, benefit, reward, favor, or gratuity (i.e., compensation) from defense contractors who had defense contracts in a total amount greater than \$10 million during the fiscal year preceding the fiscal year that such compensation was accepted, if the individual:

(1) Spent the majority of his working days during the two-year period prior to leaving Federal Government service performing a procurement function at a site or plant owned or operated by the defense contractor; or

(2) Performed procurement functions relating to a major system, on a majority of the individual's working days during the two-year period prior to leaving Federal Government service, and in the performance of those functions participated personally and substantially in a manner involving decision-making responsibilities, through contact with the defense contractor; or

(3) In the case of former DoD employees, Senior Executive Service and above, and former military officers 0-7 and above, acted as a primary representative of the United States during the two-year period prior to leaving Federal Government service, in the negotiation of a defense contract in an amount in excess of \$10 million with the defense contractor, or in the negotiation of an unresolved claim in excess of \$10 million.

(e) *18 U.S.C. 281, "Restriction on Retired Military Officers Regarding Certain Matters Affecting the Government."* (1) This statute prohibits a retired military officer of the Armed Forces from accepting any compensation, for a period of two-years after release from active duty, for the representation of any individual in the sale of anything to the United States through the Military Department from which the military officer is retired.

(2) The statute also prohibits a retired military officer, during the two-year period following the military officer's release from active duty, from prosecuting or assisting in the prosecution of any claim against the United States involving the Military Department from which the military officer is retired, or involving any subject matter with which the military officer was directly connected while in an active duty status.

## *Section 2. Other Laws Related to Standards of Ethical Conduct*

(a) *OGE digest.* Other ethics statutes are summarized in 5 CFR 2635.801(d) and 902.

(b) *Related statutes.* Engaging in the following activities may subject current and former DoD employees to criminal and/or other penalties:

(1) Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 2);

(2) Concealing or failing to report to proper authorities the commission of a felony under any criminal statute if the individual knew of the actual commission of the crime (18 U.S.C. 4);

(3) Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to further the object of the conspiracy (18 U.S.C. 371);

(4) Misuse of a Federal Government vehicle (31 U.S.C. 1344 and 1349(b));

(5) Interference in an examination or personnel action in connection with Federal Government employment (18 U.S.C. 1917);

(6) Conversion of Federal Government property (18 U.S.C. 641);

(7) Private use of public money (18 U.S.C. 653), embezzlement of the money or property of another individual in the possession of a DoD employee by reason of his Federal Government employment (18 U.S.C. 654);

(8) Certain political activities (5 U.S.C. 7321-7327, 18 U.S.C. 600-603 and 606-607 apply to civilian DoD employees, and DoD Directive 1344.10<sup>2</sup> applies to military members);

(9) Failing to register under the Foreign Agents Registration Act of 1983 and acting as an agent of a foreign principal when required to register (18 U.S.C. 219);

(10) Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351) applies to civilians; regulations set out in 5 CFR 2635.301 through 2635.304 apply to both military and civilian DoD employees;

(11) Accepting, without statutory authority, any present, emolument, office or title, or employment of any kind, from any king, prince, or foreign state without the consent of the Congress; this restriction applies to any person holding any office or profit in or trust of the Federal Government, including all retired military members and regular enlisted members (Article I, Section 9, Clause 8, of the Constitution of the United States; exceptions to this restriction are at 37 U.S.C. 908);

(12) Union activities of military members (10 U.S.C. 976);

<sup>2</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

(13) Violating merit system principles (5 U.S.C. 2301).

#### APPENDIX B TO PART 84—EXCERPTS FROM DoD PUBLICATIONS

##### *Section 1. Department of Defense Waiver in Accordance With 18 U.S.C. 208(b)*

18 U.S.C. 208(b) permits agencies to grant an exemption in writing from 18 U.S.C. 208(a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made non-disqualifying by a general regulation published in the FEDERAL REGISTER. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

##### *Section 2. Department of the Army Waiver in Accordance With 18 U.S.C. 208(b)*

A conflict does not exist when [Department of the Army] DA personnel hold shares of a widely held, diversified mutual fund or regulated investment company. In accordance with the provisions of 18 U.S.C. 208(b)(2), such holdings are exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

##### *Section 3. Department of the Navy Waiver in Accordance With 18 U.S.C. 208(b)*

(b) Under 18 U.S.C. 208(b)(2), [Department of the Navy] DON personnel need not be disqualified from participating in matters in which they have the following financial interests:

(1) Shares of widely held and diversified mutual, money market, trust, or similar funds offered for sale by a financial institution or by a regulated investment company;

(2) Deposits in and loans from banks or other financial institutions, provided they are at customary and generally available terms and conditions; and

(3) Federal, State, municipal, or local government bonds, regardless of the value of such interests.

(b) DON personnel who are members or officers of non-governmental associations or organizations must avoid activities on behalf of such groups that are incompatible with their official Government positions. Under certain circumstances, holding a position in a private association or organization or undertaking activities on its behalf could conflict with one's official duties. Holding, however, a position in a private, non-profit association or other organization that fosters and promotes the general interests of the naval service and which depends, in part, upon the voluntary efforts of DON personnel acting in their private capacities for leader-

ship, is unlikely to affect the integrity of the services of such personnel. Under 18 U.S.C. 208(b)(2), such individuals are not disqualified from rendering advice or making recommendations within their chains of command on particular matters affecting such organizations if:

(1) They disclose their interest or affiliation to their supervisor prior to rendering advice or making recommendations;

(2) The final decision is made by higher authority; and

(3) The individual's commander does not determine that disqualification is otherwise required by the best interest of DON or of the United States.

##### *Section 4. Department of the Air Force Waiver in Accordance With 18 U.S.C. 208(b)*

Non-Disqualifying Financial Interest. Air Force personnel need not disqualify themselves if the financial holdings are in shares of a widely held diversified mutual fund or regulated investment company. The indirect interests in business entities of these financial holdings come from ownership by the fund or investment company of stocks in business entities. They are hereby exempted from the requirements of 18 U.S.C. 208(a), according to 18 U.S.C. 208(B)(2), as too remote or inconsequential to affect the integrity of the government officers' or employees' services.

#### APPENDIX C TO PART 84—DoD HUMAN GOALS

##### *Department of Defense, Human Goals, The Attainment of These Goals Requires That We Strive*

To attract to the Department of Defense people with ability, dedication, and capacity for growth;

To provide opportunity for everyone, military and civilian, to rise to as high a level of responsibility as possible, dependent only on individual talent and diligence;

To assure that equal opportunity and safety programs are an integral part of readiness;

To make military and civilian service in the Department of Defense a model of equal opportunity for all regardless of race, color, sex, religion, or national origin;

To provide equity in civilian employment for older persons and disabled individuals and to provide a safe environment that is accessible to and usable by them;

To hold those who do business with or receive assistance from the Department to full compliance with its policies of equal opportunity and safety;

To help each service member in leaving the service to readjust to civilian life;

## Office of the Secretary of Defense

## § 85.5

To provide a safe and healthful work environment, free from recognized occupational hazards for all personnel; and

To contribute to the improvement of our society, including its disadvantaged members, by greater utilization of our human and physical resources while maintaining full effectiveness in the performance of our primary mission.

### PART 85—HEALTH PROMOTION

#### Sec.

- 85.1 Purpose.
- 85.2 Applicability and scope.
- 85.3 Definitions.
- 85.4 Policy.
- 85.5 Responsibilities.
- 85.6 Procedures.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 53 FR 33123, Aug. 30, 1988, unless otherwise noted.

#### § 85.1 Purpose.

(a) This part establishes a health promotion policy within the Department of Defense to improve and maintain military readiness and the quality of life of DoD personnel and other beneficiaries.

(b) This part replaces 32 CFR part 203 and establishes policy on smoking in DoD occupied buildings and facilities.

#### § 85.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, and the Defense Agencies.

(b) It is directed to all military personnel and retirees, their families, and, where specified, to civilian employees.

#### § 85.3 Definitions.

*Health Promotion.* Any combination of health education and related organizational, social, economic or health care interventions designed to facilitate behavioral and environmental alterations that will improve or protect health. It includes those activities intended to support and influence individuals in managing their own health through lifestyle decisions and selfcare. Operationally, health promotion includes smoking prevention and cessation, physical fitness, nutrition, stress management, alcohol and drug abuse prevention, and early identification of hypertension.

*Lifestyle.* The aggregated habits and behaviors of individuals.

*Military Personnel.* Includes all U.S. military personnel on active duty, U.S. National Guard or Reserve personnel on active duty, and Military Service Academy cadets and midshipmen.

*Self-Care.* Includes acceptance of responsibility for maintaining personal health, and decisions concerning medical care that are appropriate for the individual to make.

*Target Populations.* Military personnel, retirees, their families, and civilian employees.

#### § 85.4 Policy.

It is DoD policy to:

(a) Encourage military personnel, retirees, their families and civilian employees to live healthy lives through an integrated, coordinated and comprehensive health promotion program.

(b) Foster an environment that enhances the development of healthful lifestyles and high unit performance.

(c) Recognize the right of individuals working or visiting in DoD occupied buildings to an environment reasonably free of contaminants.

(d) Disallow DoD Components' participation with manufacturers or distributors of alcohol or tobacco products in promotional programs, activities, or contests aimed primarily at DoD personnel. This does not prevent accepting support from these manufacturers or distributors for worthwhile programs benefiting military personnel when no advertised cooperation between the Department of Defense and the manufacturer or distributor directly or indirectly identifying an alcohol or tobacco product with the program is required. Neither does it prevent the participation of military personnel in programs, activities, or contests approved by the manufacturers or distributors of such products when that participation is incidental to general public participation.

#### § 85.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Health Affairs)* (ASD(HA)) shall coordinate and monitor the DoD health promotion program in accordance with this part, executing this responsibility